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 Received at the
 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 92-317 ✓

In re Applications of:

MILFORD
 BROADCASTING CO.
 (hereafter "MBC")

File No. BPH-911003MI

SHARON A. MAYER
 (hereafter "Mayer")

File No. BPH-911004MG

For Construction Permit for a
 New FM Station on Channel 271C2
 in Milford, Iowa

HEARING DESIGNATION ORDER

Adopted: December 30, 1992; Released: January 29, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.¹

2. *Preliminary matter.* On November 13, 1991, Edward De Spain ("De Spain") filed an informal objection to Mayer's application alleging that Sharon Mayer is not financially responsible and would not be a competent custodian of the public trust. Specifically, De Spain alleges that, after Sharon Mayer and her husband purchased the De Spain family business in 1986, the Mayers defaulted on the purchase contract, and failed to pay their employees and creditors. De Spain's objection appears to be founded on a private contractual dispute. The Commission has consistently held that private disputes are beyond our regulatory jurisdiction and must be resolved in a local court of competent jurisdiction. See *John R. Kingsbery*, 71 FCC 2d 1173 (1979); *John F. Runner, Receiver (KBIF)*, 36 RR 2d 773 (1976); *Transcontinental Television Corp.*, 21 RR 945 (1961). Therefore, the informal objection filed by Edward De Spain will be denied.

3. *Multiple Ownership.* David Protratz, a principal of MBC, claims a 10% ownership interest in KJJG(FM), Spencer, Iowa, and pledges to divest any attributable interest he may hold in station KJJG. Accordingly, in the event of grant of MBC's application, David Protratz will be required to come into compliance with 47 C.F.R. § 73.3555 prior to the commencement of program test authority.

4. *Financial.* Section III, Item 3 of FCC Form 301 (June 1989) requires that an applicant specify each source of funds, including the name, address, telephone number, contact person if the source is an entity, any relationship of the source to the applicant, and the amount of funds to be

supplied by each source. Mayer has not provided the address of the source of funds as requested in Item 3. Accordingly, Mayer must file an amendment which gives all the information required by Section III, Item 3 with the presiding Administrative Law Judge after this Order is released.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.
2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That the informal objection filed by Edward De Spain IS HEREBY DENIED.

8. IT IS FURTHER ORDERED, That in the event of grant of MBC's application, David Protratz will be ordered to come into compliance with 47 C.F.R. § 73.3555 with respect to station KJJG(FM), Spencer, Iowa, prior to commencement of program test authority.

9. IT IS FURTHER ORDERED, That Mayer shall submit an amendment which contains the information required by Section III, Item 3 of FCC Form 301 to the presiding Administrative Law Judge within 30 days of the release of this Order.

10. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices

¹ On August 31, 1992, the staff dismissed the application of L.

Andy Kleven, BPH-911007ME, for failure to pay a hearing fee.

of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. See generally *Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau